

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

<b>IN RE:</b> <b>JODY S. MCINTYRE,</b> <b>DEBTOR</b>	<b>§</b> <b>§</b> <b>§</b>	<b>BANKRUPTCY NO. 23-10006</b>  <b>CHAPTER 11</b>
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**SOUTH PADRE CAPITAL RESERVE, LLC 'S EXPEDITED MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

**This is a motion for relief from the automatic stay. If it is granted, the movant may act outside of the bankruptcy process. If you do not want the stay lifted, immediately contact the moving party to settle. If you cannot settle, you must file a response and send a copy to the moving party at least 7 days before the hearing. If you cannot settle, you must attend the hearing. Evidence may be offered at the hearing and the court may rule. Represented parties should act through their attorney. There will be a hearing on this matter on February 9, 2023 at 1:30 pm in courtroom 5, United States Courthouse (third floor), 600 East Harrison, Brownsville, Texas.**

**Movant Requests Expedited Relief. Movant Requests that a hearing be set no later than February 9, 2023.**

TO THE HONORABLE JUDGE OF SAID COURT:

South Padre Capital Reserve, LLC, an interested party, moves the Court for an order granting relief from the automatic stay of 11 USC §364 as described in this Motion and in support would show the Court as follows:

1. Jurisdiction. The Bankruptcy Court has jurisdiction over this motion pursuant to 28 USC §1334. A Motion for Relief from Stay is a core proceeding as defined in 28 USC §157. The Bankruptcy Court has authority to enter a final order in this matter.
2. Parties. Movant is South Padre Capital Reserve, LLC. Movant is interested parties in this proceeding.

Respondent is the Debtor, Jody S. McIntyre.

3. Facts.

3.1. On information and belief, Debtor Jody McIntyre is an affiliate of A+ Pro Recovery and Towing, LLC, currently a debtor in a Chapter 7 case pending in this Court (hereafter referred to as “A+”).

3.2. Debtor Jody McIntyre is the father of Castine McIlhargey, currently a debtor in a Chapter 7 case pending in this Court (hereafter referred to as “McGilhargey”) . Accordingly, McIntyre and McGilharey are insiders to one another and, on information and belief, are both insiders as to A+ Pro Recovery and Towing, LLC.

3.3. Movant South Padre Capital Reserve, LLC (hereafter referred to “SPCR”) is the owner of real property described as:

Lots 1-4, Block 8, Sunny Isle Subdivision, South Padre Island,  
Cameron County, Texas.

The property contains an office building and there is an adjoining tow yard. The street address is 1515 Padre Boulevard, South Padre Island, Texas.

3.4. SPCR has obtained judgments of eviction against the Debtor, A+ and McGilhargey for Suite 1, Suite 5, and the adjoining tow yard at 1515 Padre Boulevard. These judgments were obtained before any of the bankruptcy cases were filed.

3.5. The Chapter 7 Trustee in the A+ and McGilharey cases has stipulated that the estates in those cases have no interest in the premises at 1515 Padre Boulevard.

3.6. Debtor, A+ and McGilhargey appealed the eviction judgments and the appeals are now before the 107<sup>th</sup> Judicial District Court, Cameron County, Texas.

3.7. A+ filed its Bankruptcy Petition shortly before a hearing scheduled by the 107<sup>th</sup> Judicial District Court on the eviction appeals; after the Trustee’s stipulation in that case, McGilarey filed her petition. After the Trustee’s stipulation in that case, Movant got an order

setting the appeals for hearing in the 107<sup>th</sup> District Court. That hearing was set for January 17, 2023. The petition in this case was set filed on January 13, 2023.

3.8. The pattern of conduct among these related parties suggests that Debtor, A+ and McGilharey are using this Court to delay a resolution of the appeals of the eviction suits.

3.9. Based upon the information provided in the Debtor's petition, there is no prospect of an effective reorganization because the Debtor doesn't have sufficient income to fund any plan. The property in question is not necessary for an effective reorganization because the Debtor has no interest in the property except that of a trespasser. Therefore, cause exists to modify the automatic stay.

3.10. Need for Expedited Relief. Movant has received information from AEP, an electricity provider, that Debtor is denying access to the electric meters on the property. The meters are issued in Movant's name and AEP is threatening to take action against Movant with regard to the lack of access to the meters. Until the Debtor is evicted, the Debtor will continue this course of conduct. Therefore, Movant requests an expedited hearing.

4. Relief Requested.

4.1. Movant believes that the defense of an appeal brought by the Debtor (including asking for an obtaining a hearing and having the Court enter a final judgment on the appeal) does not constitute a violation of the automatic stay. However, out of respect for this Court, Movant seeks an order modifying the automatic stay to permit it to schedule a hearing on all appeals of the eviction judgments in the 107<sup>th</sup> Judicial District Court, to present its case at the hearing, and to obtain a ruling on the appeals.

4.2. In addition, in the event the eviction judgments are sustained on appeal, then Debtor's only interest in the property at 1515 Padre Boulevard is a bare right of possession as a

trespasser. Movant requests an order modifying the automatic stay to permit it to obtain Writs of Possession from the Justice of Peace Court, to deliver the writs to the appropriate officer for service, and to obtain possession of the property at 1515 Padre Boulevard.

4.3. **IN REM RELIEF REQUESTED.** The Debtor, his daughter, and A+ Pro have now filed three bankruptcy cases with the purpose of preventing a resolution of the eviction appeals and remaining in possession of the premises at 1515 Padre Boulevard. This conduct is clear abuse of the bankruptcy process. Movant seeks an *in rem* order modifying the automatic stay to permit Movant to pursue resolution of the eviction cases involving the premises at 1515 Padre Boulevard, South Padre Island, Texas and the adjoining tow yard, permitting Movant to obtain writs of possession for those premises, and permitting Movant to have the writs of possession served and have all occupants of 1515 Padre Boulevard Suites 1 and 1515 Padre Boulevard Suite 5 and the tow yard evicted from the premises. This relief is necessary to prevent continuing loss to Movant and to prevent further abuse of the Bankruptcy process.

5. Prayer. Movant prays that the Court:

A. Modify the automatic stay to permit Movant to:

1. Obtain a setting in the 107<sup>th</sup> judicial district court on all appeals of the eviction judgments pending in that court;
2. In the event of a successful ruling on the eviction appeals, obtain writs of possession for 1515 Padre Boulevard, South Padre Island, Texas, Suite 1 and 1515 Padre Boulevard, South Padre Island, Texas, Suite 5 and the adjoining tow yard;
3. Serve writs of possession on all Debtor and all occupants of 1515

Padre Boulevard, South Padre Island, Texas, Suite 1 and 1515 Padre Boulevard, South Padre Island, Texas suite 5 and the adjoining tow yard and remove them from the premises.

B. Movant further prays that the Court make the order requested an order *in rem* with respect to the premises located at 1515 Padre Boulevard, South Padre Island, Texas, Suite 1, 1515 Padre Boulevard, South Padre Island, Suite 5, and the adjoining tow yard.

### **LOCAL RULE 4001 CERTIFICATE**

The undersigned certifies that on January 16, 2023 at :01 pm, the undersigned attempted to confer with the Debtor as required by Local Rule 4001 as follows: First class mail addressed to Jody Sean McIntyre at 1005 Ebony Lane, Laguna Vista, TX 78578. The effort to confer was unsuccessful.

Date: January 19, 2023.

Respectfully submitted,  
Law Office of Andrew K. Rozell

By: /s/Andrew K. Rozell  
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Attorney for South Padre Capital Reserve,  
LLC

### **CERTIFICATE OF SERVICE**

I certify that, in addition to any persons served through the Court's CM/ECF system, on the same day this document was submitted, for electronic filing, I mailed a true and correct copy to the Debtor, Jody Sean McIntyre, at the following address by first class mail:

Jody Sean McIntyre  
1005 Ebony Lane  
Laguna Vista, TX 78578

/s/Andrew K. Rozell  
Andrew K. Rozell